

Translation

PATENT COOPERATION TREATY

PCT

09/936,719

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference SM5164	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP00/02137	International filing date (day/month/year) 10 March 2000 (10.03.00)	Priority date (day/month/year) 16 March 1999 (16.03.99)
International Patent Classification (IPC) or national classification and IPC C09D 13/00, A61K 7/027, 7/032		
Applicant SCHWAN-STABILO COSMETICS GMBH & CO.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of _____ sheets.
- This report contains indications relating to the following items:
 - I ☒ Basis of the report
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 21 September 2000 (21.09.00)	Date of completion of this report 05 June 2001 (05.06.2001)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP00/02137

I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

☒ the international application as originally filed.

☒ the description, pages 1-14, as originally filed,
pages _____, filed with the demand,
pages _____, filed with the letter of _____,
pages _____, filed with the letter of _____.

☒ the claims, Nos. 1-17, as originally filed,
Nos. _____, as amended under Article 19,
Nos. _____, filed with the demand,
Nos. _____, filed with the letter of _____,
Nos. _____, filed with the letter of _____.

☐ the drawings, sheets/fig _____, as originally filed,
sheets/fig _____, filed with the demand,
sheets/fig _____, filed with the letter of _____,
sheets/fig _____, filed with the letter of _____.

2. The amendments have resulted in the cancellation of:

☐ the description, pages _____
☐ the claims, Nos. _____
☐ the drawings, sheets/fig _____

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	7, 8, 12, 15, 17	YES
	Claims	1-6, 9, 10, 11, 13, 14 and 16	NO
Inventive step (IS)	Claims		YES
	Claims	7, 8, 12, 15 and 17	NO
Industrial applicability (IA)	Claims	1-17	YES
	Claims		NO

2. Citations and explanations**1.) Reference is made to the following documents:**

D1 = EP-A-0 861 657 (L'OREAL), 2 September 1998
(1998-09-02) mentioned in the application

D2 = WO-A-95/11000 (THE PROCTER & GAMBLE COMPANY),
27 April 1995 (1995-04-27)

2.) D1 (page 4, lines 24-53; page 7, lines 41-44; Claim 16) discloses cosmetic coloring sticks, e.g., lipsticks, which contain an ethyl cellulose soluble in organic solvents, such as glycol esters. Thus, D1 appears to be prejudicial to the novelty of Claims 11, 13, 14 and 16.

The process in Claims 1-6, 9 and 10 also appears to be at least implicitly disclosed because how else could a coloring sticks disclosed in D1 be produced except through "the addition of alkyl cellulose to the stick composition" in an unspecified way.

Hence, Claims 1-6, 9, 10, 11, 13, 14 and 16 lack the novelty required in PCT Article 33(2).

2a) Lipsticks which contain ethyl cellulose and fatty

alcohols and/or fatty acid esters are disclosed in the claims in D2, see in particular Claims 1, 6 and 10. Although the solubility of the cellulose derivative in the fatty alcohols is not precisely specified, it is assumed that at least part of the cellulose is soluble under conditions corresponding to the application (see Claim 5 in the application). Consequently, D2 is also prejudicial to the novelty of the above-indicated claims.

- 3). Claims 7, 8, 12, 15 and 17 are novel over D1 and D2 because the solvents explicitly claimed, the length and diameter of the sticks, and the use for special lipsticks, e.g., contouring sticks, are not precisely defined in D1 and D2.

An unexpected technical effect caused by these distinguishing features in light of D1 and D2 has not been claimed or shown. As a result, the application addresses the problem of making available further coloring sticks and the processes for their production. That problem has been solved in a way that does not involve an inventive step by experimentation with solvents and the stick dimensions not explicitly mentioned in the prior art. Consequently, Claims 7, 8, 12, 15 and 17 do not satisfy the requirements of PCT Article 33(3) regarding inventive step.